IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3361 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SHRIMATI MANBAI KUNVARJI - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

==========

Appearance :

MR NALIN K THAKKER for Petitioner(s) : 1,
MR. MR MENGDEY, ASSTT. GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2,2.2.1
UNSERVED-EXPIRED (R) for Respondent(s) : 2.2.2

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 21/09/2005

ORAL JUDGMENT

1.In this petition under Article 227 of the Constitution of India, the petitioner has challenged the legality

and validity of the judgment and order passed by the Secretary (Appeals), Revenue Department, State of Gujarat dated 7.3.1987 passed in Revision Application No.SRD/HKP/356/1985 in partly allowing the said Revision Application, however, not passing any order with regard to restoring Entry No.94 and on the contrary, confirming the order passed by the Deputy Collector cancelling Entry No.94.

2. The dispute is with regard to the land bearing Survey No.70 situated at village Vibhapur and Revenue Entry No.94 by which name of the petitioner was mutated in the revenue record.

3. One Valand Jiva Petha, father of respondent Nos.2/1 and 2/2 was declared to be the occupant of the suit land i.e. land bearing Survey No.70. The said land came to be purchased by the petitioner by registered sale-deed and the name of the petitioner was mutated in the revenue record by Entry No.94 on 20.11.1974. It appears that the Deputy Collector issued a suo-motu notice dated 29.5.1978 to cancel the Entry No.94 dated 20.11.1974 on the ground that the transfer and/or sale in favour of the petitioner was illegal as the land in

question was not an Old Tenure Land but it was a New Tenure Land. The Deputy Collector, Nakhatrana by his order dated 12.3.1984 set aside the Entry No.94 by holding that the transaction was with regard to the New Tenure Land and the same is illegal. Being aggrieved and dissatisfied with the order passed by the Deputy Collector, Nakhatrana dated 12.3.1984, the petitioner preferred Revision Application/Appeal before the Collector, Kutch and the Collector, Kutch not only dismissed the said Appeal confirming the order passed by the Deputy Collector, Nakhatrana dated 13.3.1984 cancelling Entry No.94 but also passed an order forfeiting the land in question to the State Government by his judgment and order dated 18.10.1985. Being aggrieved and dissatisfied with the order passed by the Collector, Kutch dated 18.10.1985 passed in Appeal No. 3/84-1/85, the petitioner preferred Revision Application before the Secretary (Appeals), Revenue Department, State of Gujarat being Revision Application No. SRD/HKP/356/1985 and having held that the Collector, Kutch was not justified in forfeiting the land to the State Government in RTS proceedings and to that extent the order passed by the Collector, Kutch is bad in law and partly allowed the said Revision

Application quashing and setting aside the direction issued by the Collector, Kutch forfeiting the land to the State Government, however, confirmed the order passed by the Deputy Collector, Nakhatrana with regard to quashing and setting aside Entry No.94. The Secretary (Appeals), Revenue Department, State of Gujarat also passed an order to initiate the proceedings independently and separately for selling the land in question which is a New Tenure Land without prior permission. Being aggrieved and dissatisfied with the judgment and order passed by the Secretary (Appeals), Revenue Department, State of Gujarat dated 7.3.1987, the petitioner has preferred the present Special Civil Application under Article 227 of the Constitution of India.

4. Shri Mankad, learned advocate appearing on behalf of the petitioner has vehemently submitted that when the petitioner has purchased the land in question by registered sale-deed, the Revenue Authorities are bound to give effect to the same in the revenue record and in RTS proceedings, the Revenue Authority has no jurisdiction to decide the legality and validity of the transaction and when the Secretary (Appeals), Revenue

Department, State of Gujarat has set aside the order passed by the Collector, Kutch directing to forfeit the land to the State Government, the Secretary (Appeals), Revenue Department, State of Gujarat ought to have restored Entry No.94 which was in the name of the petitioner on the basis of the registered sale-deed and therefore, it is requested to allow the present Special Civil Application.

5. Shri MR Mengdey, learned AGP while supporting the order passed by the Secretary (Appeals), Revenue Department, State of Gujarat has submitted that when the transaction in question itself has illegal as the land in question was New Tenure Land and therefore, the Secretary (Appeals), Revenue Department, State of Gujarat was justified in confirming the order passed by the Deputy Collector, Nakhatrana with regard to quashing and setting aside Entry No.94. He has also further submitted that when the Secretary (Appeals), Revenue Department, State of Gujarat found that the direction issued by the Collector, Kutch in his order dated 18.10.1985 forfeiting the land to the State Government in RTS proceedings is illegal, the same came to be set aside by the Secretary (Appeals), Revenue

Department, State of Gujarat and therefore, it is requested to dismiss the present Special Civil Application.

6. It is not in dispute that the petitioner has purchased the land in question by registered sale-deed. Under the circumstances, the Revenue Authorities are bound to give effect to the said transaction in the revenue record, however, if it is found that the said transaction is in breach of some other provisions and/or the same is illegal, the same cannot preclude the Revenue Authority from making an entry in the revenue record to that effect and will not preclude Revenue Authorities from initiating the proceedings. However, the necessary effect of the sale-deed is required to be given in the revenue record with an additional entry that according to the revenue authority the said transaction is illegal and if any proceedings are initiated for declaring the said transaction illegal and the said entry would be the subject to the ultimate outcome of the present proceedings. In the present case as stated above, the Secretary (Appeals) was conscious with regard to the jurisdiction of the Revenue Authorities while

conducting RTS proceedings and therefore, has rightly set aside the direction issued by the Collector, Kutch issued in his order dated 18.10.1985 forfeiting the land to the State Government in RTS proceedings. However, the Secretary (Appeals) also confirmed the order passed by the Deputy Collector, Nakhatrana cancelling Entry No.94 which is not proper. As stated above so far as the entry on the basis of registered sale-deed is concerned, if the Revenue Authorities are of the opinion that the said transaction is illegal, an additional entry can be made and that they can refer the dispute to the competent authority and/or if they have got the jurisdiction, they can initiate the proceedings for declaring the said transaction as illegal. Merely because an entry is made on the basis of registered sale-deed, it cannot preclude the competent authority for declaring the said transaction illegal after holding necessary inquiry and initiating proceedings. Under the circumstances, the present Special Civil Application is required to be allowed to that extent by restoring Entry No.94 subject to certain conditions which are stated hereinafter.

7. For the reasons stated above, the judgment and order

passed by the Secretary (Appeals) dated 7.3.1987 passed in Revision Application No. SRD/HKP/356/1985 in so far as confirming the order passed by the Deputy Collector, Nakhatrana cancelling Entry No.94 is hereby quashed and set aside and rest of the order passed by the Secretary (Appeals) with regard to initiating the proceedings for declaring the sale transaction as illegal is confirmed. Entry No.94 with regard to the land in question is restored and the Mamlatdar and the Competent Revenue Authority are directed to make an additional entry that according to them, the sale transaction is illegal and it will be subject to ultimate outcome of the proceedings which may be initiated by the Competent Authority for declaring the sale transaction as illegal. Entry in the revenue record will not preclude the Revenue Authority from initiating the proceedings declaring the sale transaction as illegal and the Competent Authority is directed to comply with the direction issued by the Secretary (Appeals) issued vide judgment and order dated 7.3.1987 passed in Revision Application No. SRD/HKP/356/1985 and to comply with the same.

8. Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

(M.R.SHAH, J.)

kdc.